

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

CHRISTOPHER UMBERGER,

Plaintiff,

v.

CIVIL ACTION NO. 5:08-cv-00883

CHRISTY UNDERWOOD, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court are the Motion to Dismiss Defendant Christy Underwood and Substitute the United States of America [Docket 3], the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction [Docket 5], and Plaintiff's Motion to Dismiss Without Prejudice [Docket 8]. By Standing Order entered on August 1, 2006, and filed in this case on July 1, 2008, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation (PF&R). Magistrate Judge VanDervort filed his PF&R [Docket 9] on January 7, 2009, recommending that this Court **GRANT** the United States' motion to substitute and motion to dismiss and **DENY AS MOOT** Plaintiff's motion to dismiss.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989);

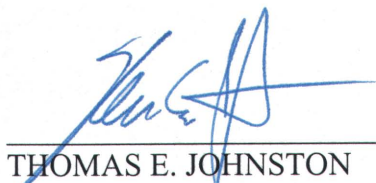
United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R in this case were due on January 26, 2009. To date, no objections have been filed.

Accordingly the Court **ADOPTS** the PF&R [Docket 9], **GRANTS** the Motion to Dismiss Defendant Christy Underwood and Substitute the United States of America [Docket 3], **GRANTS** the United States’ Motion to Dismiss for Lack of Subject Matter Jurisdiction [Docket 5], **DENIES AS MOOT** Plaintiff’s Motion to Dismiss Without Prejudice [Docket 8], and **DISMISSES** the case from the docket. A separate Judgment Order will enter this day implementing the rulings contained herein.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 3, 2009



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE